

**Before The  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC 02-6
	)	
Further Notice of Proposed Rulemaking	)	FCC 03-323
	)	

**COMMENTS OF THE  
CONSORTIUM FOR SCHOOL NETWORKING AND  
INTERNATIONAL SOCIETY FOR TECHNOLOGY IN EDUCATION**

**INTRODUCTION**

The Consortium for School Networking (CoSN) and the International Society for Technology in Education (ISTE) are membership-based groups that serve educators who use technology to improve teaching and learning. For more than a decade, CoSN, whose members include school districts, state and local education agencies, nonprofits, companies and individuals who share our vision, has worked to advance the K-12 education community's capacity to effectively use technology to improve learning through advocacy, policy and leadership development. ISTE is a nonprofit professional organization with a worldwide membership of leaders in educational technology. ISTE promotes appropriate uses of information technology to support and improve learning, teaching, and administration in K–12 education and teacher education.

CoSN and ISTE have both been active participants before the Commission in proceedings related to the E-Rate, individually and in partnership with EdLiNC, as representatives of many of the thousands of educational institutions that benefit from the

E-Rate program. Our participation in this proceeding reflects our members' commitment to ensuring the long-term viability of the E-Rate program as the telecommunications marketplace evolves, and our interest in addressing specific issues raised in the Commission's recent Third Report and Order and Second Further Notice of Proposed Rulemaking (hereinafter the Further Notice) (FCC 03-323), released February 10, 2004.

## **DISCUSSION**

### **I. The Discount Matrix**

In the Further Notice, the Commission seeks comments on several proposals to amend rules governing the disbursement of discounts through the E-Rate program. Specifically, the Commission asks whether it can accomplish its goals of spreading internal connections funding to applicants with lower discounts and deter waste, fraud and abuse by altering the discount matrix to reduce the Priority Two discount rate in some or all of the bands, including the 90% discount band. Additionally, the Commission asks whether it should establish a separate discount matrix for Priority Two funding that would have a top-tier discount level lower than the current system's 90% level. Finally, the Commission seeks comment on whether it should disburse funds on a pro rata basis if there are insufficient funds available to fund 100% of all eligible requests in any newly created combined discount rate bracket.

In previous filings, CoSN and ISTE advocated for trial discount matrix adjustments for Priority Two services in order to drive down E-Rate discounts to E-Rate applicants with lower discount rates. However, in light of the Commission's recent adoption of new rules that will limit applications to only twice every five years for Priority Two services, we do not support any of these proposals at the current time for

three reasons: 1) the new rule should be afforded ample time to operate in order to determine whether it has accomplished CoSN's and ISTE's goal of increasing Priority Two discount disbursement; 2) additional rules on top of the newly announced "twice every five years rule" may sow confusion among applicants and vendors and deter some eligible applicants from participating in the program; and 3) forcing the neediest applicants, at whom this program is targeted, to pay larger proportions of eligible service costs may make it impossible for them financially to apply for discounts.

CoSN and ISTE feel that the Commission should not amend the current discount matrix until the effects of the newly promulgated "twice every five years" rule are determined. Instead, the Commission should adopt a "wait and see" approach to see if these rules will achieve the same goals as the proposals in the Further Notice.

Additionally, we strongly believe that, to ensure the program's stability, applicants should have ample time to adjust to major program rule changes before they must contend with additional new rules. Our members who apply for E-Rate discounts have continually expressed frustration with the number and magnitude of program rule changes with which they have had to comply since the program's inception. From an applicant's perspective, frequent rule changes, no matter how necessary or warranted, serve only to further complicate an already complex program, to increase hardship for those applicants that lack the time and the staff to keep up with new regulations, and to cause, invariably, more paperwork. With the Commission's establishment of the new "twice every five years rule", applicants once again must grapple with a major program rule change that, this time, will require them to redraft their technology plans and to change the way they budget for the E-Rate. ISTE and CoSN believe that applicants must

have sufficient time to adjust to these rule changes without the additional burden of coping with discount matrix alterations.

Lastly, we agree with the concerns expressed by many of our colleagues in EdLiNC as well as by Commissioner Copps that reducing the top level discount rate or developing a separate discount matrix for Priority Two funding would work a significant hardship on some of the program's neediest applicants. If the Commission were to adopt any of the discount matrix adjustment proposals contained within the Further Notice, the program's most disadvantaged applicants would be required, at a minimum, to double or even triple the amount of money that they would have to pay for their non-discounted shares of the services for which they seek to support. Further, if the Commission adopted a pro rata share rule in the event that insufficient funds were available to provide discounts to all applicants in the enormous top tier bracket that would result from reducing the current to level bracket for Priority Two services, these same needy applicants would find themselves bearing a still greater share of an eligible service's cost. Even in the best of economic times, which many of this nation's states and school districts are not currently enjoying, such rule changes would make new technology prohibitively expensive and deny educational institutions the technology that they desperately need.

## **II. Cost Effective Funding Requests**

For many of the same reasons that it proposed a discount matrix adjustment, namely improving Priority Two funding disbursement, preventing goldplating, and deterring waste, fraud and abuse, the Commission seeks comment on whether to adopt a ceiling on

the total amount of annual funding that an applicant can request and on whether it should develop a bright line test to determine what qualifies as a cost effective service. For many of the same reasons noted above, CoSN and ISTE are unable to support these proposals.

In sum, we believe that the new “twice every five years ” on internal connections should be provided ample time to operate and the impact on the availability of priority two funds before the Commission establishes any new rules aimed at addressing the same concern. Additionally, we remain concerned that overwhelming applicants with serial major rule changes causes confusion and deters participation in the program. Finally, and specific to the funding ceiling proposal, we must note that any such ceiling would necessitate the development of a complex formula that likely would upset the delicate balance of discount rate and funding priorities that the Commission has developed over the program’s lifetime. In effect, the Commission’s adoption of such a ceiling would almost completely rewrite the program’s rules, thereby exacerbating the very confusion in the applicant and vendor communities that CoSN and ISTE would like to avoid.

### **III. The Competitive Bidding Process**

In the Further Notice, the Commission proposes eliminating the Form 470 for applicants who seek funding exclusively for local and long distance services (including cell phone services) or for applicants that seek to continue existing telecommunication services or Internet access services. The Commission also seeks comments on requiring service providers to certify that the prices in their bids have been independently developed in order to protect applicants from inflated bids and price collusion by providers.

While CoSN and ISTE support the posting process' goal of stimulating competition to drive down service costs, we find ourselves unable to ignore the dearth of evidence to support the conclusion that the posting process actually generates many competitive bids. We observed closely the testimony at Commissioner Abernathy's hearing last spring and, like many others, heard no witnesses offer testimony that the posting process was fulfilling its aims. Indeed, we heard then and have heard many times since that the process continues to serve as one of the major stumbling blocks to successful completion of the application process, with many applicants still receiving funding denials for failure to post for the requisite 28 days. We find it disturbing that the very process that was supposed to make eligible services more affordable for applicants is, in fact, causing many of them to receive no discounted services at all.

Therefore, we support the Further Notice's proposal that, at a minimum, the Form 470 process should be eliminated for existing telecommunications and Internet access services that operate on month-to-month contracts. Because of the higher costs involved with nonrecurring services such as the purchase and installation of Priority One equipment and all Priority Two services, we continued to believe that the posting process should remain in place..

However, in order to maintain the integrity of the program, we propose that applicants should have the *option* to engage in the Form 470 process annually for Priority One month-to-month services, and *must* go through the Form 470 posting process at least every three years to ensure that districts periodically seek competitive pricing for continuing services. We feel that it is important that entities post contracts for competitive bidding every three years because it is generally recognized that the average

lifespan of technology equipment is three years. Moreover, since the E-Rate program mandates that technology plans are updated and revised every three years, our proposed Form 470 process would coincide with standard technology planning and equipment purchase schedules.

Finally, ISTE and CoSN support any efforts undertaken by the Commission to prevent collusion and price-fixing by unscrupulous providers. We hope that the Commission will actively take steps to protect applicants in high cost areas from falling victim to those vendors who would seek to extract an unfair and anticompetitive service price from them.

#### **IV. Recovery of Funds**

The Further Notice also seeks comments on a range of issues related to the recovery of mistakenly disbursed funds identified during the commitment adjustment process. Specifically, the Commission seeks comments on whether to: 1) seek recovery of the full amount of the funding commitment error in every circumstance; 2) recover funds directly from applicants or continue to collect from service providers; and 3) institute rules to bar funding disbursement to those applicants who are the subjects of commitment adjustments until they have made full satisfaction of the outstanding commitment adjustments and to subject these applicants to more rigorous scrutiny in future awards.

CoSN and ISTE oppose the repayment of *de minimis* amounts in the recovery process. In our view, pursuit of such amounts is a waste of USAC's already strained resources and does little to build goodwill in the vendor or applicant communities.

Additionally, CoSN and ISTE also oppose establishing rules that would defer action on any funding request involving a beneficiary for whom there is an outstanding commitment proceeding. We believe it unfair to hold in abeyance unrelated future service applications until an applicant satisfies a commitment adjustment order because, in many cases, it may lead to applicants being forced to choose between their due process rights to pursue legitimate appeals and their desire for SLD to timely process current year applications. CoSN and ISTE strenuously object to unnecessarily forcing applicants to make such a Hobson's choice.

Finally, it has been brought to our attention that SLD and the Commission are now seeking repayment of funds erroneously disbursed – and long since spent – during the earliest years of the program. We can conceive of nothing more destabilizing to the E-Rate program than applicants living in fear that SLD or the Commission may decide that it must recollect from them discounts to which they believed they were entitled and which they spent many years previously. In this rather harsh economic climate, where many schools, districts and states have been forced to make significant cuts to education technology, forcing applicants to repay thousands of dollars could prove devastating to not just technology and connectivity systems but to local education itself. For these reasons, we recommend that the Commission establish a blanket two-year statute of limitations for the recovery of erroneously disbursed monies. The clock would begin to run under such a system from the date of the applicant's commitment letter, thereby providing SLD and the Commission ample time to discover and process any commitment adjustments.

## **V. Other Actions to Reduce, Waste, Fraud & Abuse**

In this proceeding, the Commission proposed several amendments designed to reduce waste, fraud and abuse of the E-Rate program. The proposals include new recordkeeping requirements, regulations regarding consultants and outside experts, technology plans and application authorization.

### **A. Recordkeeping Requirements**

In the Further Notice, the Commission seeks comments on whether it should amend the rules to require program participants to keep records that demonstrate compliance with the E-Rate program for five years after the date such services were rendered. CoSN and ISTE support this proposal, on the condition that the Commission and USAC specifically identify and provide a list of those records that must be retained and agree that applicants cannot be penalized for failing to retain records that the Commission and USAC do not specifically cite. With this caveat in mind, CoSN and ISTE believe that this proposal would not only prevent waste, fraud and abuse, but would also protect applicants in the event of vendor disputes.

### **B. Consultants and Outside Experts**

It is currently commonplace for E-Rate applicants to rely on consultants and outside experts to assist in the application process. The Commission questions whether applicants should be required to identify any consultants or outside experts, paid or unpaid, that assist in the development of technology plans or the operation of the procurement process, and whether these consultants should be required to register with

USAC and disclose any potential conflict that they may have with service providers.

Although CoSN and ISTE support the disclosure of conflicts by all consultants to applicants and the registration of paid consultants with USAC, we believe that unpaid consultants who lack conflicts should not be required to register with the Commission.

Many E-Rate applicants rely heavily on the input and assistance of unpaid volunteers, including parents, teachers and students, to complete the application process. While paid consultants can and should be answerable to the Commission and the SLD about application issues, we fear that the formal identification of unpaid consultants with no conflicts may impose significant, unwanted obligations (*e.g.*, responding to audits) that would make them less willing to render assistance in the application process.

In addition, we support EdLiNC's recommendation that the Commission adopt a rule prohibiting entities whose primary purpose is commercial profit and who are actively bidding to serve as a service provider for the applicant from serving as a consultant in the application and technology planning process. Specifically, we are concerned that entities whose primary purpose is commercial profit have an inherent conflict in consulting on applications and technology planning and that their active participation in either or both processes could undermine the competitive bidding process. Non-profit entities, such as education service agencies (ESAs) that often serve as both applicants and as service providers, have no such inherent conflict as ESAs are public entities that are most interested in providing the lowest service costs to the districts that they serve.

### **C. Technology Plans**

Another proposal for which the Commission seeks comment in the Further Notice is whether all applicants should be required to demonstrate in their technology plans that they have considered the cost of leasing versus the cost of purchasing E-Rate eligible products and services. As explained in the Further Notice, the purpose of this proposal is to force the applicant to prove that it has considered and selected the most cost effective solution. Additionally, the Commission asks whether technology planning requirements should be amended to be more consistent with the Department of Education's technology planning requirements under the No Child Left Behind Act and the U.S. Institute for Museum and Library Services' planning goals and requirements.

CoSN and ISTE believe that any specific technology plans instituted by the Commission should be consistent with the technology plans that states, districts and schools must devise to receive federal education funding. However, technology plans, by their very design, are not intended to include cost effective purchasing analysis. The goal of technology plans is to map the general purposes and functionalities for the entity, but not to select the technology that is the cheapest to fulfill these purposes. In fact, we understand that some states specifically forbid districts to include specific equipment and purchase prices in their technology plans for fear of unduly limiting technology choices.

The competitive bidding and the state and local procurement processes, to which all applicants must adhere, are designed specifically to determine for applicants the most appropriate technology to serve their needs and to uncover the lowest price for the technology identified. Requiring such an analysis during the design of the technology plan is not only duplicative of the role of the competitive bidding process, but it may even vitiate the effectiveness of the competitive bidding process by pre-determining the

products and services. We can envision scenarios in which applicants incorrectly predict the most cost effective solutions in their technology plans, and consequently limit the scope of services for which they seek bids. Therefore, we cannot support any proposals to mandate that applicants undertake a cost effectiveness analysis in their technology plans.

#### **D. Prevention of Unauthorized Applications by Subunits**

The Commission also asks whether library branches and individual public schools should be barred from applying for funding without authorization by the relevant central library or the school district. CoSN and ISTE feel it is important to ensure that only authorized personnel are able to apply for funding, but expect that USAC already intensely scrutinizes the identity of applicants and only considers those applications signed by authorized personnel. Consequently, this change appears to be redundant of existing policies and unnecessary.

### **VI. Priority for Applicants that Have Not Achieved Connectivity**

Because the goal of the E-Rate program is to achieve 100% connectivity in schools and libraries, the Commission seeks comment on whether applicants that fall short of this goal should be given a priority over other applicants who have achieved full connectivity for their classrooms and libraries. By the most recent measure of the National Center for Education Statistics, as of 2002, 8% of public school instructional classrooms lacked Internet access. No comparable numbers exist for private schools and public libraries.

CoSN and ISTE strongly support any action that will lead to 100% connectivity for all schools and libraries in the United States. We feel that the Commission's establishment of a "superpriority" for as yet unconnected eligible applicants could serve three critical functions: 1) to assist the E-Rate program in achieving its goal of 100% connectivity; 2) to rectify any inequity in Priority Two funding caused by the limited availability of internal connections funds; and 3) to allow the E-Rate program to move on to the next phase of development and address the speed of connectivity in classrooms and libraries.

Bearing those laudable goals in mind, CoSN and ISTE recommend that the Commission proceed cautiously in implementing a "superpriority" to avoid unduly disturbing the program's current funding structure. As a first matter, we believe that the Commission must determine which eligible entities remain unconnected and assess the cost of connecting them to the Internet. If the cost is relatively large, in the hundreds of millions or billions range, we recommend further that the "superpriority" be accomplished over a span of a few years to ensure that other connected but still needy applicants can continue to gain access to Priority Two funds.

## **CONCLUSION**

CoSN and ISTE appreciate the Commission's work on these critical E-Rate issues. We look forward to continuing to assist and advise the Commission in this important undertaking.

Dated: March 9, 2004

Respectfully submitted,

INTERNATIONAL SOCIETY FOR  
TECHNOLOGY IN EDUCATION  
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